ORIGINAL CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

1919. July 24.

DESAI VENECHAND RAJPAL AND OTHERS, APPELLANTS AND PLAINTIFFS *v.* LAKHMICHAND MANEKCHAND, RESPONDENT AND DEFENDANT.*

Letters Patent, clause 15—Judgment, meaning of—Order refusing injunction to restrain prosecution of suit in a foreign Court, not a judgment—No appeal lies against such order—Jurisdiction—Motion.

An order refusing to grant an injunction to restrain the defendant from prosecuting a suit filed by him in the Court of a Native State is not a 'judgment' within the meaning of clause 15 of the Letters Patent, and no appeal lies against that order.

The Justices of the Peace for Calcutta v. *The Oriental Gas Company*(1), referred to; *Sonabai* v. *Tribhowandas* (2), distinguished.

APPEAL from order on motion.

On the 14th of May 1919, the plaintiffs filed this suit against the defendant praying that it might be declared that the partnership between them and the defendant was dissolved on the 26th of June 1917; that since the date of the said dissolution they were the sole owners of the assets of the partnership business; that the defendant had no interest in the profits of the business since the date of the dissolution and that pending the hearing and final disposal of the suit the defendant, his servants and agents might be restrained by an order and injunction of the Court from prosecuting a suit for an account filed by the defendant in a Court of the Morvi State claiming a sum of Rupees two lakhs from the plaintiffs.

On the 27th of May 1919, the plaintiffs took out a notice of motion that they would move the Court on the 4th of June 1919, for an order and injunction to restrain the defendant from prosecuting the suit filed by him in the Morvi Court.

* O. C. J. Suit No. 1465 of 1919: Appeal No. 51 of 1919.

(1) (1872) 8 Beng. L. R. 433. (2) (1908) 32 Bom. 602.

The plaintiffs in their affidavit in support of motion stated that the original agreement of partnership was executed in Bombay ; that the business to be done under the said partnership agreement was done in Bombay ; that the documents by virtue of which the defendant retired from the business were executed in Bombay and that no cause of action arose within the jurisdiction of the Morvi State. In addition, the plaintiffs relied upon the fact (1) that they apprehended that they would not get justice from the Morvi Court as they had incurred the displeasure of H. H. The Thakore Saheb of Morvi and (2) that they would be put to serious inconvenience in going to trial to Morvi, the books of the partnership and their witnesses being in Bombay.

The defendant in his affidavit in reply stated that on the 4th of January 1919 he had filed his suit in the Morvi Court ; that the plaintiffs subsequently filed their suit in the High Court on the 14th of May 1919 with the sole object of harassing him ; that the plaintiffs had considerable immoveable property in Morvi where they habitually resided ; that the High Court had no jurisdiction to restrain him from presenting his suit in the Morvi Court and that the subject-matter of his suit in the Morvi Court was not identical with the subject-matter of the suit filed by the plaintiffs in the High Court.

The motion came on for hearing before Mr. Justice Pratt who dismissed it with costs. His Lordship delivered the following judgment :—

PRATT, J.:—This is a motion on behalf of the plaintiff firm to restrain the defendant from prosecuting a suit which he has filed against them in the Court at Morvi. The defendant filed his suit in the Morvi Court on the 4th January 1919. In that suit he alleged that he had

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retired from the partnership of the plaintiff firm in Bombay from 26th June 1917 and that his account was settled in writing; that subsequent to that settlement the firm agreed to pay him a four annas share of their future profits in consideration of valuable services rendered which had saved the firm from ruin; he therefore prayed for an account to be taken of the profits of the firm and for payment to him of the amount due under this oral agreement.

Four months later, i.e., on the 19th of May, the plaintiffs filed this suit here, which is in effect a cross-suit, and in it they deny the oral agreement set up by the defendant and complain that the Morvi suit is a false suit inspired by evil designed persons and pray for a declaration that they are exclusively entitled to the assets of their firm. In this suit, the plaintiffs now seek an injunction to restrain the defendant from prosecuting his suit in the Morvi Court.

The notice of motion was dated the 27th of May and was first heard by Marten J. who, on the 26th of June, expedited the hearing of the suit to the 4th August and ordered the notice of motion to stand over, with liberty to the plaintiffs to bring it on if the Morvi suit were proceeded with. This event has, however, happened for, on the 3rd July, the Morvi Court refused to stay the proceedings and fixed 13th of July for the plaintiffs to file their written statement and ordered the production of Bombay accounts on that day. The plaintiffs have therefore brought on the motion again.

Now there is no doubt as to the jurisdiction of this Court to restrain a party within its jurisdiction from prosecuting a suit in a foreign Court. The principle on which this jurisdiction is exercised is set forth in the judgment of Lord Cranworth in the case of *Carron Iron Company* v. *Maclaren*[1]. It is that "The Court acts

[1] (1855) 5 H. L. C. 416 at pp. 436-437.

in personam, and will not suffer any one within its reach to do what is contrary to its notions of equity, merely because the act to be done may be, in point of locality, beyond its jurisdiction". The authorities collected in that judgment embrace three classes of cases in which this principle has been enforced. These are, firstly, when the foreign suit is vexatious and has been filed by a party to a litigation pending in England in which complete relief may be had; secondly, when the foreign suit is ill-calculated to answer the ends of justice, e.g., when the suit would have to be decided under English law and the remedy in England would be more complete; thirdly, the general grounds of equity and good conscience.

Now with regard to the first and third class of cases, it must be observed that there is no equity to restrain the prosecution of a suit on the ground that it is false and inspired by evil designed persons. The truth or falsehood of a suit is a matter to be decided in that suit. It is harassing to defend any suit whether true or false, but what is vexatious is the pursuit of the same remedy before two different tribunals: *McHenry* v. *Lewis*[1]; *Heilmann* v. *Falkenstein*[2]. Again unless there is some equity affecting the conscience of the party who is prosecuting the foreign suit, the Court cannot restrain him on the simple ground that it is of opinion that the remedy could have been pursued in the British Court. To do so would be to prescribe to the parties the Courts in which they should file their suits and this would be the exercise not of judicial but legislative functions. This point is well illustrated by the case of *Pennell* v. *Roy*[3]. In that case one Campbell was made bankrupt in England and his property both in England and Scotland was taken possession of by the assignees

[1] (1882) 22 Ch. D. 397. [2] (1917) 33 T. L. R. 383.
[3] (1853) 22 L. J. Ch. 409.

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under the bankruptcy who perfected their title to it under Scotch law. Nevertheless a Scotch creditor, Roy, instead of proving in the English bankruptcy proceedings, filed a suit in the Scotch Court against Campbell and the assignees to recover payment from the bankrupt's estate and attached part of the estate in Scotland. Pennel and another assignee in the bankruptcy sought to restrain the Scotch suit, but the injunction was refused by the Court of Appeal. It was even admitted that Roy's procedure was irrational and absurd, but as he had not been a party to the bankruptcy proceedings in England, there was no equity to compel him to seek his relief there.

Now to come to the merits of the motion, the grounds on which the injunction is sought are three: (1) The Morvi Court has no jurisdiction. (2) The plaintiffs have no expectation of getting justice in Morvi Court. This is for reasons set forth in their affidavits. They say they were, in July 1918, acting as commission agents for H. H. The Thakore Saheb of Morvi for the sale of cotton in Bombay and sold cotton just before the market went up. They say that by so doing they have incurred the displeasure of H. H. The Thakore Saheb who is making illegal recoveries from their Morvi debtors to compensate himself for the loss; that the Morvi Judge is an officer drawing Rs. 85 per mensem and it is even suggested that the Morvi suit has been filed at the instance of H. H. The Thakore Saheb. (3) The inconvenience of going to trial at Morvi, the books of the partnership and the witnesses being in Bombay.

The first ground has not been pressed. Apart from the admitted fact that the plaintiffs' ancestral home and property is at Morvi, I think it is clear that the question whether the defendant's suit is maintainable at Morvi or not is for the Morvi Court to decide.

I feel equally clear that I cannot entertain the second ground. It is true that Melvill J., in *Bhavanishankar Shevakram* v. *Pursadri Kalidas*[1], commented adversely on the administration of justice in the Courts of some Native States and held that a suit in British India would not lie on the judgment of a Court in a Native State. But that case was dissented from by the Madras High Court in *Sama* v. *Annamalai*[2], and the Madras view was upheld by the Privy Council in *Gurdyal Singh* v. *Raja of Faridkot*[3]. The present Code of Civil Procedure makes no distinction between Courts in Native States and other foreign Courts. The proper principle to apply is, therefore, the one expressed by Lord Eldon in *Wright* v. *Simpson*[4], that it is the duty of the Court to give credit to foreign Courts for doing justice in their own jurisdiction. On that principle the fact that the plaintiffs have incurred the displeasure of the Ruling Chief is quite irrelevant; for I cannot presume that the Morvi Court, whatever the pay of its presiding Judge, will allow that circumstance to influence its judgment. The Morvi Court has a discretion to expedite the proceedings in the suit there, in the same way that Marten J. expedited the proceedings here.

There remains only the third ground, that of convenience. It will, no doubt, be inconvenient to the plaintiffs to take their account books from Bombay to Morvi, but is that a sufficient reason for preventing the defendant, who, I observe, describes himself in the Morvi plaint as a resident of Morvi, from prosecuting his suit there? At the time he filed his suit in Morvi, there was no suit pending in Bombay in which he could have obtained the same relief. There was, therefore, nothing vexatious in his suing in Morvi. There is

(1) (1882) 6 Bom. 292.
(2) (1883) 7 Mad. 164.
(3) (1894) 22 Cal. 222.
(4) (1802) 6 Ves. 714.

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no reciprocity in the matter of the executions of decrees between Morvi Courts and Courts in British India. The plaintiffs have considerable immoveable property in Morvi and the defendant probably filed his suit there, as in the event of success he would be better able to pursue his remedy against that property. I know of no equity that makes it unconscionable of him to consult his own convenience rather than that of the party whom he is suing.

It cannot be suggested that the Morvi suit is not calculated to answer the ends of justice or that a complete remedy could not be had in that suit. Indeed, if the question were considered from this point of view then the Morvi suit is even better calculated to provide a complete remedy than a British suit. The defendant prays for an account. If the agreement on which he relies is not proved the suit would be dismissed, but if it is proved the account would be decreed and he would recover what is decreed on it. In the suit here the plaintiff seeks a mere declaration. If he gets it well and good; but if he fails the matter will still be in *statu quo* as regards the account. Sir Chimanlal argues that the defendant might file a counter-claim in the suit here but that is beside the point. As the suits stand, the Morvi suit provides a more complete remedy than the British suit. And there is no equity to compel the defendant to abandon his Morvi suit and to file a fresh suit here even though by way of counter-claim. This is the very point covered by the decision in *Pennell* v. *Roy*[1] that I have already referred to.

The plaintiffs seek no consequential relief. They sue for a bare declaration which would be worth nothing if the Morvi suit were proceeded with. It seems

[1] (1853) 22 L. J. Ch. 409.

to me clear that this suit is merely a device to compel the defendant to give up his suit in Morvi and that it is the defendant who is being vexed by a second suit here in respect of matters which are already being litigated there.

The motion, therefore, fails. Plaintiffs to pay costs of this motion.

The plaintiffs appealed.

Setalvad with *Desai*, for the appellants.

Kanga, for the respondent.

Kanga:—I submit that the appeal ought to fail on the preliminary point that the order refusing an injunction to restrain the prosecution of the respondent's suit in the Morvi Court is not appealable. Under clause 15 of the Letters Patent that order is not a judgment: see *The Justices of the Peace for Calcutta* v. *The Oriental Gas Company*[1] and *Miya Mahomed* v. *Zorabi*[2]. Nor would the order come under either section 10 or section 104 of the Civil Procedure Code.

Setalvad:—The term 'judgment' in clause 15 of the Letters Patent is very comprehensive and includes the determination of any right incidental to the suit. The right need not be a right which is the subject-matter of suits: see *Sonabai* v. *Tribhowandas*[3]. On a good cause shown, the Courts in England usually grant injunctions restraining prosecution of suits. If the appeal is thrown out on preliminary point, the jurisdiction of the High Court is virtually allowed to be ousted by the Morvi Court and a further bar would arise under section 13 of the Civil Procedure Code. Everything relating to the dispute occurred in Bombay.

MACLEOD, C. J.:—This is an appeal from the order of Mr. Justice Pratt on an application made by the

(1) (1872) 8 Beng. L. R. 433 at p. 452. (2) (1909) 11 Bom. L. R. 241.
(3) (1908) 32 Bom. 602.

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plaintiffs on motion that pending the hearing and final disposal of this suit the defendant, his servants and agents, might be restrained by an order and injunction of this Honourable Court from prosecuting the suit filed by him against the plaintiffs in the Court of the Morvi State. The learned Judge held that the motion failed and directed the plaintiffs to pay the costs.

A preliminary point has been taken that no appeal lies against that order. It is admitted that the appeal could only lie under clause 15 of the Letters Patent, and that therefore no appeal lies, unless the order can be considered as a judgment. A "judgment" clause 15, according to the decision in *The Justices of the Peace for Calcutta* v. *The Oriental Gas Company*[1], which has been followed in this Court, means a decision which affects the merits of the question between the parties by determining some right or liability. The questions in this suit appear in the prayers of the plaint. It was prayed, first, that it might be declared that the partnership between the plaintiffs and the defendant was dissolved on or about the 26th day of June 1917; that since the date of the said dissolution the plaintiffs were the sole owners of the assets of the said firm; that the defendant had no interest in the profits of the said firm since the date of the dissolution; and then the plaintiffs further asked that pending the hearing and final disposal of this suit the defendant, his servants and agents, should be restrained from prosecuting the suit he filed in the Court of the Morvi State.

Now the defendant in this suit filed a suit in the Morvi Court on the 4th January 1919, praying that the Court should take an account of the partnership business

[1] (1872) 8 Ben. L. R. 433.

and realise its assets, and that on such account being taken the Court would be pleased to pass a decree in the plaintiff's favour for such amount as appears due to him from the defendants or for whatever relief he might be entitled.

The plaintiffs in this suit did not file their plaint until the 14th May 1919. Now it is difficult to see how the order of Mr. Justice Pratt, refusing to grant the injunction asked for, is a decision which affects the merits of the questions between the parties by determining any right or liablity on either side. It has been suggested that the effect of refusing to grant the injunction would be to oust the jurisdiction of this Court. If the jurisdiction of this Court in this suit is in any way ousted, it is owing to the fact that the plaintiff in the Morvi suit preferred to file his plaint there, and might get a decree in that Court which would bar under section 13 of the Civil Procedure Code, the plaintiffs' suit in this Court, unless the plaintiffs can succeed on any of the exceptions to that section. We have been referred to the case of *Sonabai* v. *Tribhowandas*[1]. In that suit Mr. Justice Davar ordered the plaintiff to deposit with the Prothonotary a sum of Rs. 3,000 as security for the first defendant's costs. It was objected on appeal as a preliminary point that no appeal lay against the order, and it was conceded that there could only be an appeal if the order was a judgment within the meaning of clause 15 of the Letters Patent. Mr. Justice Batchelor said in referring to the case of *Hadjee Ismail Hadjee Hubbeeb* v. *Hadjee Mahomed Hadjee Joosub*[2] :—

"I am of opinion that this reasoning covers the case of the order now under discussion, for the effect of it is, at least conditionally, to deprive the Court of the jurisdiction which it otherwise would have to try the plaintiff's suit."

(1) (1908) 32 Bom. 602 at p. 610. (2) (1874) 13 Beng. L. R. 91 at p. 101.

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That is not the case here. If the order of Mr. Justice Pratt is allowed to stand, the jurisdiction of this Court is not ousted as a direct consequence of that order. It may be ousted in future by the defendant in this Court obtaining a decree in the Morvi Court. But whether that will occur or not remains for future decision. I can see nothing in this order which brings it within the definition of "judgment" above referred to. Therefore in my opinion the preliminary point is good and no appeal lies.

We have heard counsel, however, for the appellants on the merits. I may say that in my opinion the decision of the learned Judge in the Court below was perfectly correct. The appeal will, therefore, be dismissed with costs throughout.

HEATON, J. :—I agree both that the order of the Court below was correct on the merits, and also that no appeal lies. It may be that the definition of the word "judgment" as used in clause 15 of the Letters Patent, which was quoted by my Lord the Chief Justice, is not exhaustive. I gather from the case of *Hadjee Ismail Hadjee Hubbeeb* v. *Hadjee Mahomed Hadjee Joosub*[1] that if the order directly involves a real question of jurisdiction, if its effect is to give jurisdiction or to take away from the Court jurisdiction, then an appeal will lie. But there is nothing of that kind in this case. It is not disputed in this appeal that the Court had jurisdiction to grant or refuse an injunction. But it is contended that the effect of refusing an injunction was to deprive the Court of its own jurisdiction. To my thinking, if the jurisdiction of the Court can in any way be affected, it is, or rather it will be, (because the event has not yet happened), by operation of law. If the Morvi Court

[1] (1874) 13 Ben. L. R. 91.

makes a decree, then by the operation of section 13 of the Civil Procedure Code the High Court here may be debarred from proceeding with the suit. But to refuse to prevent the natural operation of the law in that way, is not to cause an ouster of the jurisdiction. Therefore I agree that the appeal should be dismissed with costs.

Solicitors for appellants: Messrs. *Bhaishankar, Kanga and Girdharlal.*

Solicitors for respondent: Messrs. *Edgelow, Gulabchand, Wadia & Co.*

Appeal dismissed.

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Before Mr. Justice Heaton and Mr. Justice Marten.

MULCHAND RAICHAND AND ANOTHER (DEFENDANTS), APPELLANTS *v.* GILL & Co. (PLAINTIFFS), RESPONDENTS.*

1919: *July* 31.

Civil Procedure Code (Act V of 1908), section 10—Application by defendant for stay of plaintiff's suit, defendant having filed an earlier suit in a mofussil Court—Plaintiff's application for injunction to restrain defendant from proceeding with his suit—Matter "directly and substantially in issue in a previously instituted suit", meaning of—Jurisdiction of High Court to order a party before it not to proceed with a suit in another Court—Practice of Court of Chancery to make an order in personam *against a party residing out of the Court's jurisdiction.*

On the 25th of March 1919, the plaintiffs, commission agents in Bombay, filed a suit in the High Court against the defendants, cotton merchants at Bijapur, claiming a sum of Rs. 82,372-1-0 as being due to them in respect of advances made to the defendants against cotton from time to time. The defendants had, however, on the 13th of March 1919, filed a suit in the Court

* O. C. J. Suit No. 944 of 1919: Appeal No. 36 of 1919.